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Committee on Enforced Disappearances
Ninth session

Summary record of the 143rd meeting
Held at the Palais des Nations, Geneva, on Wednesday, 9 September 2015, at 10 a.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Montenegro (continued) (CED/C/MNE/1; CED/C/MNE/Q/1 and Add.1; HRI/CORE/MNE/2012)

1. . *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*

2. **Mr. Corcuera Cabezut** said that he would like to know whether there were any cases in which Montenegrin courts had applied the principle of non-refoulement and, if so, whether the persons in question had been at risk of enforced disappearance or of another type of situation covered by international refugee law. He wished to know which authority was responsible for determining the existence of such risks and what procedures were provided for under Montenegrin law in cases of expulsion or deportation.

3. He would appreciate clarification as to whether the definition of the term "victim" contained in the Criminal Code included the disappeared person's family members, relatives and loved ones and, if so, up to what degree of kinship. He had the impression that a person was characterized as a victim only in the context of criminal proceedings in Montenegro. If that was the case, then the question arose as to what rights were afforded the relatives of disappeared persons if no criminal proceedings were initiated. He would like to know whether the relatives of any disappeared persons had taken part in legal proceedings dealing with crimes against humanity committed in the territory of the former Yugoslavia and, if so, when a decision was expected in any of those proceedings that had not yet been concluded.

4. In view of the fact that the State party's laws made provision for the compensation of relatives of persons subjected to enforced disappearance, he wished to know what criteria were used in setting the amount of compensation and which authority was responsible for doing so. Was due weight given to victims' testimony in determining those amounts? He would appreciate it if the delegation could confirm whether, in some cases, victims had received compensation only after suing for damages in a civil suit. He wished to know whether the State party's laws provided for other types of redress, in addition to monetary compensation, and how the State party intended to ensure the fulfilment of all the rights to obtain reparation that were set out in article 24, paragraph 5, of the Convention and in international case law. What means were provided for under national law in order to give effect to the obligation set forth in article 24, paragraph 6, of the Convention? He recalled that, so long as the fate of a disappeared person had not been determined, the person was presumed to be alive. He wondered whether any provision in the State party's laws addressed the legal situation of disappeared persons whose fate was unknown and that of their relatives in areas such as social welfare, financial matters, family law and property rights without requiring the issuance of a declaration of death.

5. **Mr. López Ortega** said that he would appreciate clarification on the measures taken by the State party to enforce the prohibition on secret detention. Along those lines, he wished to know whether a standard operating procedure was used in police stations and other places of detention to notify relatives, or other designated persons, when a person had been taken into custody. There appeared to be a discrepancy between article 29 of the Constitution, which entitled persons deprived of their liberty to have a person of their choice "immediately" informed of their situation, and article 180 of the Code of Criminal Procedure, which stipulated that notification that a person had been taken into custody must be given within 24 hours at the latest. The Code of Criminal Procedure appeared to provide a lesser guarantee than the Constitution did,

and he would appreciate the delegation's views on the matter. Given the State party's acknowledgement that it was sometimes difficult to meet the 24-hour deadline, he wished to know why that was so and what the content of the proposed amendment to the relevant provision in the Code of Criminal Procedure was.

6. In addition, he would appreciate further details on how family members were informed of a prisoner's transfer from one police station, prison or other place of detention to another. Under existing regulations, how much time could elapse before an arrested person had to be provided with legal assistance? Did national laws relating to states of emergency or war provide for any restrictions to be placed on the rights set forth in articles 17 and 18 of the Convention? He wished to know whether the official registers and/or records of persons deprived of liberty to which reference was made in article 17, paragraph 3, of the Convention contained personal data on those persons and, if so, whether they included all the information listed in that provision. He would like to know whether there was a standard procedure for maintaining those registers, whether a central register was maintained and whether registers were also kept in juvenile detention centres and psychiatric institutions. Was there an oversight body which verified that the registers were filled in properly and what kind of penalties could be imposed on a civil servant who failed to do so? He would also like to know whether a prison inspectorate had been set up and, if so, what powers were conferred upon it and how frequently it conducted inspections.

7. The Committee would be interested to learn whether judges and prosecutors received specific training in relation to the Convention, whether such training was also provided to members of the police and armed forces, and whether forensic doctors received specialized training in forensic anthropology and the recovery of mortal remains. Information would be appreciated on the mandate, functions, powers, composition and work of the governmental Commission on Missing Persons and on the procedure used to hand over the remains of disappeared persons to their families, the number of corpses that had been identified and what was done with the mortal remains of those that had not been identified.

8. Women and children were particularly vulnerable to enforced disappearance and should be afforded extensive protection that was tailored to each specific situation. He wondered whether Montenegrin law provided for that type of specificity and what kinds of public policies were in place regarding the protection of women and children at risk of enforced disappearance. Lastly, with regard to the information provided on Montenegrin adoption procedures in paragraph 21 of the replies to the list of issues (CED/C/MNE/Q/1/Add.1), he would appreciate clarification on exactly what type of coercion or deceit could give rise to the annulment of an adoption and who had to have been subject to coercion or deceit in order for an annulment to be issued. If those were the only grounds for annulling an adoption, there would seem to be a need for additional provisions to deal with adoptions of children in cases of enforced disappearance. He wished to know whether there had been any instances in which adoptions had been annulled and, if so, how national law gave effect to article 25, paragraph 5, of the Convention, which provided that the best interests of the child must be the primary consideration and that the views of the child must be given due weight in all matters covered by article 25.

9. **Mr. Yakushiji** said that he would like to know whether there was any national law applying to deportation procedures that specifically prohibited non-refoulement in cases where persons would be at risk of enforced disappearance or whether that prohibition was established by means of the direct application of article 16 of the Convention. With regard to article 17 of the Convention, he would appreciate receiving details concerning the bill to amend the Code of Criminal Procedure and an explanation as to why one of the proposed amendments would eliminate the

requirement that family members were to be notified when a person had been taken into custody within 24 hours at the latest. He also wished to know why the requirement that persons deprived of liberty were to be brought before the Public Prosecution Service within 12 hours of their arrest was to be amended so as to extend the limit to 24 hours.

10. **Mr. Hazan** asked whether, during the armed conflicts that had taken place in the former Yugoslavia, the State party had kept a record of reports of missing children and of the possible whereabouts of such children.

11. **Ms. Galvis Patiño** said that the Montenegrin legal system apparently did not make a distinction between the rights of victims of human rights violations and those of victims of other criminal offences. If that was the case, and no express provision was made for the former, article 24 of the Convention could be invoked and applied directly by victims of human rights violations.

12. **Ms. Janina**, referring to the current unprecedented flow of migrants into Europe, said that she would be interested in hearing the delegation's views on the question as to whether, if the State party were one day to be faced with such an influx, its lack of autonomous legislation on enforced disappearance might influence the manner in which individual requests for asylum in Montenegro were examined and treated and might affect the State party's ability to handle them in a manner that was consistent with article 16 of the Convention.

The meeting was suspended at 10.35 a.m. and resumed at 11 a.m.

13. **Mr. Kojović** (Montenegro) said that the Montenegrin Constitution mirrored the principle of the prohibition of secret detention that was set forth in article 17 of the Convention. As described in paragraphs 91 to 94 of the State party's report (CED/C/MNE/1), a person could be deprived of liberty only for the reasons and following the procedure provided for by law. At the request of a person deprived of liberty, the competent authority must inform a person designated by him or her of the deprivation of liberty, and the person deprived of liberty had the right to have a defence attorney of his or her choosing present at interrogation.

14. The State party had reaffirmed its commitment to protect human rights and freedoms through the establishment of the Office of the Protector of Human Rights and Freedoms, which served as the State party's ombudsman and as the national mechanism for the protection of persons deprived of liberty from torture. The Protector cooperated directly with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Deputy Protector for the Prevention of Torture had been appointed in July 2012. The principle of the prohibition of secret detention was also affirmed in the Code of Criminal Procedure, which stipulated that detention could be ordered only under the conditions set forth in the Code and only if the same purpose could not be achieved by other means. The Code established that authorities taking part in criminal proceedings had a duty to proceed with exceptional urgency if the accused person was in detention and that detention was to be terminated as soon as the grounds for which it had been ordered ceased to exist. The Code also laid down rules governing the accommodation, rights, correspondence and visitation of persons deprived of liberty.

15. Referring to paragraphs 95 to 97 of the State party's report, he said that the President of the Court or a designated judge was required to visit detainees at least twice a year and could do so at any time to inspect detainees' living conditions, and any inmate whose rights were violated was entitled to compensation. Records were kept on all persons in detention. Those records contained, at the very minimum, the information stipulated by the Convention, and relatives and legal counsel could access that information on request. Registers were kept according to the standard rules of

procedure followed by all police stations and other agencies involved in handling detainees' cases. Oversight in that regard was performed by the Ministry of Justice and Ministry of the Interior.

16. Detainees could choose to inform a relative or other designated person of their situation immediately, and no detainee had ever waived that right. The strict enforcement of that provision was sometimes hindered, however, by the fact that electronic and other means of communication were not as developed in Montenegro as in many industrialized countries. Detainees usually informed the person of their choosing by telephone. The Code of Criminal Procedure also required the police and courts to assist detainees to arrange for legal counsel.

17. The discrepancy between the provisions of article 29 of the Constitution and article 180 of the Code of Criminal Procedure had been eliminated. The period within which a person must be brought before the public prosecutor had been increased from 12 to 24 hours for reasons of practicality. As Montenegro was a mountainous country with heavy snowfall and limited transport infrastructure, and since there were only two public prosecutor's offices that were authorized to handle major offences in the entire country, it was simply not always possible to reach a public prosecutor's office within half a day. If it took longer than 12 hours for the police to bring a person before a prosecutor, the reason for the delay had to be entered in the official record. Every effort was made to enforce the 48-hour time frame allowed for hearing appeals against a remand order, although that was sometimes impracticable; for example, some criminal cases involved large groups of 30 or more defendants and, in such instances, it was difficult if not impossible for all statements to be heard and the case files to be forwarded within 48 hours. Although the Committee might consider that time period to be excessive, the Government had drafted the law in consultation with experts from the Council of Europe. Foreigners who were deprived of their liberty could request that their embassy should be informed by telephone and in writing. Stateless persons could elect to inform an organization of their choosing.

18. Training on fundamental human rights was provided not only to judges and prosecutors, but also to the staff of all agencies involved in criminal proceedings, such as the police, courts and the prosecution service. He was unsure as to whether forensic doctors received specific training but would find out and inform the Committee in due course.

19. **Ms. Vukčević** (Montenegro) said that there were indeed cases in which families had brought charges in an effort to determine the fate of a disappeared person. In one case, a Montenegrin had disappeared while on business in Kosovo during the armed conflict of 1999. As the disappearance had occurred in another country and there were no indications that the perpetrator was Montenegrin, Kosovo had been responsible for the investigation. Nonetheless, the Montenegrin special prosecutor was able to collect information on the person and then sent a letter rogatory in order to determine whether further measures had been taken by the Kosovan authorities. If that country's authorities indicated that they had reason to believe that the perpetrator was on Montenegrin soil, then the Montenegrin authorities stood ready to take further action. They had also forwarded information provided by a relative to the Kosovan Government. In relation to a number of cases of Montenegrins who had disappeared during the war in Croatia and Bosnia and Herzegovina, the Montenegrin authorities had cooperated closely with the countries concerned and had provided all available information.

20. **Mr. Bošnjak** (Montenegro) said that, in addition to the definition of the term "victim" contained in the Criminal Code, a 2015 law on compensation for damages that had been adopted pursuant to the State party's ratification of the European Convention on the Compensation of the Victims of Violent Crimes defined a victim as

a person who had died or suffered severe injury or impaired mental or physical capacities as the result of having been the direct or unintended target of a crime, of having assisted the police or of having attempted to prevent the crime. Compensation for victims' families was regulated by the Law on Contracts and Torts. The courts gave priority to compensation cases, but the proceedings nonetheless were often lengthy in nature.

21. **Ms. Džabasan** (Montenegro) said that resolving cases of enforced disappearance was of vital importance not only for victims' families but also as an indicator of democratization. In 2007, given the complexity of the cases involving enforced disappearances that had occurred in the territory of the former Federal Republic of Yugoslavia, the Government had established the Commission on Missing Persons, whose mandate was outlined in paragraph 70 of the replies to the list of issues (CED/C/MNE/Q/1/Add.1). The Commission, which had assumed the duties that had once been assigned to previous missing persons commissions set up in the territory of Montenegro since 1991, was an interministerial body comprising representatives of the Red Cross of Montenegro, various ministries and the Refugee Bureau.

22. The procedure used by the Commission in creating databases on missing persons was in accordance with guidelines drawn up by the Red Cross and based on the territorial principle. Since Montenegro had not participated in the Yugoslav wars, the persons who had disappeared in the course of those conflicts had been residing in Bosnia and Herzegovina, Croatia or Kosovo. The exhumation of remains from individual and mass graves in those territories was carried out under the auspices of the Commission. Data on unidentified remains, however, were compiled not by the Commission but by the authorities of the neighbouring States concerned. The Commission met at least once every two or three months and maintained regular contact with the missing persons commissions of Bosnia and Herzegovina, Croatia and Kosovo. A protocol for cooperation with the Kosovan Commission on Missing Persons would be signed by the end of 2015. Other questions that had been asked about the Commission were answered in paragraphs 73 to 80 of the replies to the list of issues.

23. **Mr. Djukanović** (Montenegro), in answer to a question on social and child protection, said that Committee members might wish to refer to paragraph 113 of the replies to the list of issues. With regard to the annulment of adoptions, he drew the Committee's attention to paragraph 121 of the replies. As there was no record of adoptions concluded fraudulently or under coercion, no adoption procedure had so far been declared null and void on those grounds. The highest authority in adoption cases was the Ministry of Labour and Social Welfare. In international adoption proceedings, the Government ensured that all necessary guarantees were provided by the destination country.

24. The families of disappeared persons were entitled to a range of retirement, pension and insurance benefits, and a national fund had been set up to pay for those benefits. There were no refugees or economic migrants from Afghanistan or the Syrian Arab Republic in the asylum centre in Montenegro, where just two people were currently being housed.

25. **Mr. Kojović** (Montenegro) said that there had not yet been any cases in which the principle of non-refoulement had been applied. The authority responsible for such matters was the Ministry of Internal Affairs. Deportation orders were issued by the border police, and appeals against those orders could be filed with the Ministry and, at last instance, the Administrative Court. In accordance with the Aliens Act, no persons were to be expelled from Montenegro if there were reasonable grounds to believe that such a measure would put their lives at risk.

26. **Mr. Corcuera Cabezut** said that he would like to have clarification on the time limit for bringing persons deprived of their liberty before a public prosecutor. He would also appreciate information on efforts to provide comprehensive reparation to victims of enforced disappearance, as required by article 24, paragraph 5, of the Convention, and to incorporate into domestic law a definition of the term "victim" that was in line with article 24, paragraph 1, of the Convention. He also invited the delegation to comment on reports that the Commission on Missing Persons did not meet regularly and was not proactive in fulfilling its mandate.

27. He had not yet heard a reply to questions relating to article 24, paragraph 6, of the Convention. It was important that the exercise of the rights set forth therein should not be subject to the issuance of a certificate of presumption of death. With that in mind, the delegation should indicate whether steps had been taken to address the legal situation of disappeared persons whose fate had not been determined. That could be accomplished by, for example, establishing a procedure for obtaining a declaration of absence due to enforced disappearance.

28. **Mr. López Ortega** said that clarification would be appreciated as to whether cases involving war crimes heard by courts in the State party had concerned citizens of Montenegro, whether persons who had been granted compensation for having been deported had been residents of Montenegro and, if so, whether their property had been damaged. Was the delegation in a position to confirm that there were no persons missing in Montenegro as a consequence of the Yugoslav wars? He would also like to know whether the rights enshrined in articles 17 and 18 of the Convention could be suspended during a state of emergency or war and whether proper registers and records were kept in psychiatric wards and juvenile facilities.

The meeting was suspended at 12.05 p.m. and resumed at 12.20 p.m.

29. **Mr. Kojović** (Montenegro) said that the Code of Criminal Procedure drew a distinction between deprivation of liberty, arrest and court-ordered detention. Police officers were required to bring detainees before a public prosecutor within 24 hours of arrest. If they failed to do so, the detainees would be released and could not be arrested again on the same grounds. Officers also had a duty to note down the date and time of arrest, and public prosecutors kept a record of each detainee's status. After the initial 24 hours, prosecutors had the power to extend the period of deprivation of liberty for a further 48 hours, at which point detainees would be released if no further action had been taken.

30. Pursuant to the revised Code of Criminal Procedure, police officers had an obligation to notify relatives of a person's arrest immediately. In almost all cases, detainees were able to contact a person of their choice. Although, under article 25 of the Constitution, the exercise of certain rights and freedom could be restricted to the extent necessary for the duration of a state of emergency or war, no such restriction had ever been applied with regard to detained persons' right to notify relatives of their detention. During a recent state of emergency, detainees had continued to enjoy all the rights provided for in articles 17 and 18 of the Convention.

31. Investigating judges could order that a person should be detained for a period of 30 days. That period could be extended for another two months pursuant to a request by the State prosecutor directed to the pretrial panel of the relevant court. In cases of criminal offences carrying a penalty of more than 5 years' imprisonment, the Supreme Court could extend the period of detention for up to another six months while an indictment was pending. If an indictment was not issued, the detainee in question must be released. Following the issuance of an indictment, detention could last for up to three years and came to an end when a decision was handed down at first instance. However, the decision to order a person's detention was reviewed by the pretrial panel

on a monthly basis until such time as an indictment became final and enforceable and once every two months thereafter. The Appellate Court was the competent body in the matter of the release of detainees.

32. As to the issue of compensation for damages and redress, it was important to note that there had not been any fighting in the territory of Montenegro during the conflict that had led to the break-up of the former Yugoslavia. All of the war crimes dealt with by the Montenegrin courts had been committed by Montenegrin nationals who were in Montenegro, with the exception of the Štrpci case, which had involved crimes committed in Bosnia and Herzegovina by nationals of that country and of Serbia. None of the Montenegrin nationals caught up in the incident had filed claims for compensation for property damage. One suspect had been arrested, prosecuted, convicted and imprisoned in Montenegro. With regard to damages awarded in deportation cases, the injured parties had been citizens of Bosnia and Herzegovina and had not owned any property in Montenegro. They had filed claims with the Montenegrin courts for compensation for material and non-material damages. The State had concluded settlements with all the complainants and had provided full compensation in line with the relevant international agreements. As to the Kaludjerski Laz case, the events in question had taken place on the border between Kosovo and Serbia. All the defendants had been acquitted, no property had been damaged, and the 13 complaints filed in that case had been withdrawn. The events involved in the Bukovica case had taken place on the border between Montenegro and Bosnia and Herzegovina. The Government of Montenegro had restored a number of buildings and replaced property that had been destroyed in Bukovica and had invited refugees from Bosnia and Herzegovina to return to their homes. The Morinj case had involved claims for non-material compensation filed by former prisoners of war. Final and enforceable judgements had been handed down in all of those cases. A further 65 cases remained pending. The Government of Montenegro offered assistance in the form of housing and social and welfare benefits to victims of crimes committed by persons unknown.

33. Juvenile detention centres and psychiatric facilities kept registers of persons residing in those institutions. Juvenile detainees were held in separate facilities from those in which adults were held. Offenders placed in psychiatric facilities were housed in designated wards, as necessary, and their treating physicians were required to report on their status to the relevant courts.

34. **Ms. Džabasan** (Montenegro) said that the Commission on Missing Persons had held six meetings since the beginning of 2015 and its members remained in contact on a daily basis. The Commission took part in the work involved in identifying human remains exhumed in Bosnia and Herzegovina, Kosovo and Croatia, bore the cost of their identification, transportation and burial, provided financial assistance to bereaved family members and paid the fees of forensic experts carrying out work on its behalf. No individual or mass graves containing the remains of persons listed as missing had been uncovered in Montenegro.

35. **Ms. Mašanović** (Montenegro), turning to questions regarding the legal status of disappeared persons, the financial aspects of legal procedures relating to inheritance and property ownership and the procedure for issuing a declaration of death, said that article 244 of the Family Law provided that a guardian could be appointed to protect the interests or property of persons who were absent, whose place of residence was unknown and who did not have a legal representative. Under the Law on Civil Contentious Procedure, the courts could declare persons to be dead if there had been no news of them for the past 5 years and if 60 years had passed since their birth, or there had been no news of them for the past 5 years and the circumstances of their disappearance made it likely that they were no longer alive, or if they had disappeared

during an armed conflict and there had been no news of them for 1 year from the date on which hostilities had ended.

36. **Mr. Corcuera Cabezut** said that he was impressed by the high level of the delegation of Montenegro, which included the Minister of Justice and which reflected the importance that the State party attached to the review process. He thanked the delegation for participating in such an open and constructive dialogue. A significant amount of time had been devoted to the discussion of national criminal legislation, and he was pleased that the delegation had expressed a willingness to raise the possibility of treating enforced disappearance as a separate offence in line with the Convention. The outcomes of a number of cases heard by the Montenegrin courts had been discussed in depth, and concern had been expressed at the lightness of some of the sentences handed down. The delegation had provided detailed information on the governmental bodies responsible for the implementation of the Convention, such as the special prosecutor's office. The dialogue had also focused on the importance of the search for disappeared persons. There had been a great deal of discussion of article 17 of the Convention and of the importance of ensuring that safeguards were put in place to protect individuals from the risk of enforced disappearance from the moment of deprivation of liberty. Additional information in writing on the time limits for bringing detainees before the public prosecutor and notifying relatives of their detention would be welcome. The dialogue had also covered reparation for victims of crimes of enforced disappearance, serious human rights violations and breaches of international humanitarian law. There was still some doubt as to whether a definition of the term "victim" that was in line with article 24, paragraph 1, of the Convention had been incorporated into national law, however. The civil procedure for the issuance of declarations of absence was in line with the provisions that had traditionally governed such procedures but failed to take into account the specific issue of the relatives of disappeared persons. The Committee had also referred to the need to introduce safeguards that would help to ensure that foreign nationals facing deportation or extradition did not become victims of enforced disappearance either during or after those processes.

37. **Mr. López Ortega** said that the delegation was to be congratulated on its efforts to reply to all of the questions posed by the Committee members. Over the past few years, Montenegro had made great strides in bringing its national legislation into line with international standards. He was confident that the State party would make every effort to implement the Committee's recommendations.

38. **Mr. Kaludjerović** (Montenegro) said that he wished to congratulate the country rapporteurs and the Committee members as a whole on the high quality of the dialogue. Any interaction with the treaty bodies was valuable in the context of the improvement of the human rights situation in Montenegro. He hoped that the Committee had gained a clear understanding of the advances made by Montenegro in implementing the Convention and of the challenges that remained. Many of the cases that had been discussed dated back to the break-up of the former Yugoslavia, and there had been no recent cases of enforced disappearance in Montenegro. The Government was fully committed to implementing the Committee's recommendations.

39. **The Chairperson** said that the delegation had made a valuable contribution to what had proved to be an open and fruitful dialogue.

The meeting rose at 1 p.m.

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